

SERVED: May 18, 1993

NTSB Order No. EM-172

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of May, 1993

_____)	
J. W. KIME,)	
Commandant,)	
United States Coast Guard,)	
)	
)	
v.)	Docket ME-143
)	
BILLY RAY MOULDS,)	
)	
Appellant.)	
_____)	

OPINION AND ORDER

Appellant challenges an August 20, 1990 decision of the Vice Commandant (Appeal No. 2503) affirming a three month suspension (one month outright and two months remitted on 9 months' probation) of his merchant mariner's license (No. 64193) and document (No. Z1270245) as ordered by Coast Guard Administrative Law Judge Thomas E. McElligott on February 14, 1990.¹ The law

¹Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

judge concluded that because the appellant failed to safely navigate the vessel M/V VANPORT, and tow, on which he was serving as operator on July 30, 1989, it collided with the vessel M/V MARINE INLAND, and tow, near mile marker 289 of the Gulf Intracoastal Waterway (GICW). The law judge and, subsequently, the Vice Commandant, sustained charges of negligence and misconduct finding that the collision resulted from appellant's deficient navigation and his failure to comply with several Inland Navigation Rules. For the reasons discussed below, we will deny the appeal.

The Coast Guard undertook to show in this case that the appellant was culpable for negligence and misconduct because his vessel and tow had overtaken and run into a slower moving vessel and tow before it could clear a bridge on the GICW. The appellant, in defense of the charges, sought to establish, among other things, that the other vessel was responsible for the collision because it was stalled under the bridge, blocking the channel, and it did not warn of the hazard to navigation it presented. The law judge did not believe the exonerating testimony of the appellant and his mate, but credited, instead, the account of the incident given by the operator of the M/V MARINE INLAND. The Vice Commandant, in the face of appellant's contention that the law judge had erred in rejecting his efforts to show that blame for the incident rested with the operator of the vessel and tow he ran into, made the following observation, which we think fairly summarizes the law judge's overall

assessment of the occurrence (Vice Commandant's Decision at 10):

In particular, the record reflects that Appellant, pushing a tow of barges over 1,000 feet in length, at night, around a blind bend in a restricted channel did not post a separate lookout. Additionally, the record illustrates that Appellant's vessel and tow was in an overtaking position astern of the M/V MARINE INLAND and tow. Appellant failed to sound required whistle signals while negotiating a blind bend. Additionally, Appellant attempted to overtake the M/V MARINE INLAND after being requested by the M/V MARINE INLAND to reduce speed since she required more time to pass under the bridge.

On appeal to the Board, the appellant raises the same arguments that he raised unsuccessfully in his appeal to the Vice Commandant.² The appellant does not, however, make any attempt to demonstrate any flaw in the Vice Commandant's analysis of his numerous objections to the law judge's decision or otherwise explain why we should ignore or disregard the Vice Commandant's rulings on those objections. Absent a showing of reversible error in the Vice Commandant's disposition of the matter, his decision, pursuant to our Rules of Procedure for Merchant Marine Appeals from Decisions of the Commandant, U.S. Coast Guard, must be affirmed. See 49 CFR Section 825.30(a).³

²The Coast Guard has filed a reply brief opposing the appeal. Like the Vice Commandant's decision, it discusses in detail each of the appellant's assignments of error.

³Section 825.30(a) provides as follows:

"§ 825.30 Action by the Board.

(a) On review by the Board, if no reversible error is found in the Commandant's decision on appeal, that decision will be affirmed."

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied, and
2. The decision of the Vice Commandant affirming the law judge's order is affirmed.⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

(..continued)

⁴Neither the Vice Commandant's decision nor either of the parties' briefs makes reference to the one month outright suspension of appellant's license and document. If there is a reason for this omission, it does not appear in the record transmitted to the Board in connection with the seaman's appeal.